IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5300 of 2001

with

SPECIAL CIVIL APPLICATION No 7197 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

REGIONAL MANAGER

Versus

RAJIV V VACHCHHARAJANI

Appearance:

1. Special Civil Application No. 5300 of 2001

MR MB GANDHI for Petitioner No. 1

MRS TRUSHA M GANDHI for Petitioner No. 1

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/03/2002

COMMON ORAL JUDGEMENT

#. Heard Mr.M.B.Gandhi, learned advocate appearing on behalf of petitioner - GIDC and Mr.T.R.Mishra, learned advocate for respondent workman.

#. This matter was heard by this Court yesterday and this Court has passed order but before said order could be signed, learned advocates for the parties have jointly requested to adjourn the matter tomorrow and further requested to hear the cognate matter being Special Civil Application No.7197/99 filed by the petitioner pending before this Court together with present petition and therefore, the matter was adjourned for today. Considering joint request of the learned advocates for the parties, SCA No.7197 / 1999 has been called for from the office and with consent of the learned advocates for the parties, both these matters are heard together and same are being disposed of by this common judgment.

#. Special Civil Application No.7197/1999 has been filed by the petitioner - Gujarat Industrial Development Corporation challenging the award passed by the Labour Court, Rajkot in Reference No.104 / 1994 dated 31st May, 1999, wherein the Labour Court has granted reinstatement with 60 % backwages of interim period. This Court has initially issued notice and granted ad-interim relief in terms of para-15[iii]. Thereafter, this Court has issued RULE on 9th May, 2000 and confirmed the ad-interim relief dated 21st September, 1999 subject to compliance of the provisions of Section 17-B of the Industrial Disputes Act, 1947 and the respondent workman is directed to file affidavit on or before 20th June, 2000 with respect to his unemployment and upon receipt of the copy of the said affidavit, the petitioner corporation is directed to comply with the provisions of Section 17-B of the Act. However, it was kept open to the petitioner to file counter against the affidavit filed by the workman concerned. It is noticed that against the present petition, affidavit has been filed by the respondent workman and the petitioner has also filed reply to Section 17-B application filed by the respondent workman. After order passed by this Court on 9th May, 2000, the petitioner Corporation has filed Civil Application being Civil Application No.1204 / 2001, wherein, this Court has passed order on 16th February, 2001 rejected the application with direction expediting the hearing of the main matter. It is also pertinent to note one aspect of the matter that industrial dispute raised by the respondent workman being Reference No.104 / 1994 against termination dated 27th October, 1993. The Labour Court has examined the legality and validity of the order of

termination dated 27th October, 1993 and passed award on 31st May, 1999.

#. By way of Special Civil Application No.5300 / 2001 filed by the petitioner Corporation, wherein the petitioner has challenged the order passed by the Labour Court in Recovery Application No.1/2001 dated 19th June, 2001, whereby the respondent workman has claimed last drawn wages under Section 17-B of the Act as per the order passed by this Court on 9th May, 2000 in Special Civil Application No.7197/ 1999. The respondent workman has claimed last drawn wages for period from June, 1999 to December, 2000 which comes to Rs.58,900/-. However, the Labour Court, Rajkot has granted said Recovery Application. So far this petition is concerned, this Court has issued RULE and granted interim relief in terms of para 9[ii] by order dated 16th July, 2001.

#. Learned advocate Mr.M.B.Gandhi appearing on behalf of the petitioner Corporation has pointed out relevant dates in respect of these two cognate matters pending between the very parties. Learned advocate Mr.Gandhi has submitted that first termination order dated 27th October, 1993 was challenged in Reference No.104 / 1994 by the respondent workman and the award has been passed by the labour Court, Rajkot on 31st May, 1999. Learned advocate Mr.Gandhi has also submitted that against this first termination dated 27th October, 1993, the respondent workman had also approached departmental appellate authority by way of an Appeal. However, said appeal was allowed by the appellate authority while setting aside the first termination order and granted reinstatement to the respondent workman by order dated 30th May, 1994. Thereafter, the petitioner Corporation had directed the respondent workman to resume duties at Bharuch but the respondent workman had not reported for duty at Bharuch and remained absent. Considering this act of the respondent workman as misconduct, the petitioner corporation had initiated department inquiry after issuing chargesheet to the respondent workman and ultimately, the petitioner Corporation has terminated services of the respondent workman on 5th December, 1995. Learned advocate Mr.Gandhi has submitted that against second termination order, the respondent workman has so far not raised any industrial dispute, nor challenged the same before any forum by the respondent workman. Therefore, second termination order remained unaltered. It is also submission of Mr.Gandhi that the order in question which has been examined by the Labour Court in Reference No.104 / 1994, had already been set aside by the departmental appellate authority during pendency of

said Reference NO.104/1994 and the respondent workman was reinstated on 30th May, 1994. Therefore, in such situation, the award passed by the Labour Court deciding legality and validity of the first termination order dated 27th October, 1993 is without jurisdiction. Mr.Gandhi, learned advocate has also submitted that on the basis of the order passed by this Court in Special Civil Application No.7197 / 1999 on 9th May, 2000 granting benefits under Section 17-B of the Industrial Disputes Act, 1947, the respondent workman had filed Recovery Application claiming last drawn wages from June, 1999 to December, 2000 but since the first termination order itself was set aside and the award passed by the Labour Court in Reference No.104 / 1994 dated 31st May,1999 is without jurisdiction as the order in question was already set aside by the departmental appellate authority and therefore, the question of last drawn pages as per the order passed by this Court on 9th May, 2000 does not arise and therefore, the order passed by the Labour Court in Recovery Application is also without jurisdiction in view of this contention raised by the petitioner corporation.

#. Learned advocate Mr.T.R.Mishra appearing on behalf of the respondent workman has fairly examined the submissions made by the learned advocate Mr.Gandhi and considering all these factual aspects of the matter as pointed out in detailed by Mr.Gandhi, Mr.T.R.Mishra, learned advocate for respondent workman has not disputed this factual aspect, on the contrary, he admitted that second order of termination dated 5th December, 1995 has not been challenged so far by the respondent workman either before the Labour Court or even before any other forum. Therefore, Mr.Mishra, learned advocate has submitted that when the first termination order dated 27th October, 1993 was set aside by the departmental appellate authority and reinstatement was granted by the petitioner to the respondent workman on 30th May, 1994, in such situation, award in question passed by the Labour Court in Reference No.104 / 1994 granting reinstatement with 60 % backwages, would naturally stand beyond the scope of the Reference and obviously without jurisdiction. Similarly, he also submitted that if first award passed by the labour Court in Reference No.104 / 1994 is without jurisdiction, then naturally, orders passed in Recovery Application which was based on the award passed by the Labour Court and the subsequent directions issued by this Court based on the said award in question on dated 9th May, 2000 would naturally meet with same fate and the same can be said to have passed beyond scope and without jurisdiction. However,

Mr.Mishra, learned advocate has submitted that in these circumstances, atleast the respondent workman is entitled to full wages from the date of first termination order dated 27th October, 1993 till reinstatement order passed by the departmental appellate authority dated 30th May, 1994 and therefore, prayed that this Court may direct the petitioner to pay full wages for the aforesaid period to the respondent workman. It is also his fair submission that the respondent workman has not raised any industrial dispute challenging second termination order dated 5th December, 1995 and therefore, in such situation, now the respondent workman will have to raise dispute but in doing so, the question of delay will arise in the way for raising the dispute. Mr.Mishra, learned advocate submits that the delay may come against the respondent workman for making Reference by the competent authority and therefore, requested that this Court may make some observations so that the authority concerned may not take any objection in respect of the delay caused on account of pendency of Reference from the year 1994 - 99 and pendency of these two petitions before this Court.

#. In the facts and circumstances of the case discussed above, submissions made by Mr.Mishra, learned advocate for respondent workman, in view of this Court, require to be accepted. However, it is pertinent to note that as such, there is no dispute in regard to factual aspects between the parties. When first order dated 27th October, 1993 was set aside by the departmental appellate authority and reinstatement was granted by the appellate authority on 30th May, 1994, obviously, award passed by the Labour Court in Reference No.104 / 1994 dated 31st May, 1999 requires to be set aside. Similarly, when the award in question requires to be set aside, in such situation, order passed by the Labour Cout in Recovery Application No.1/ 2001 dated 19th June, 2001 also requires to be quashed and set aside.

#. In the result, both these petitions require to be allowed and same are allowed accordingly. When this Court has allowed Special Civil Application No.7197 / 1999, the net effect would be the award passed by the Labour Court in Reference No.104 / 1994 dated 31st May, 1999 is hereby quashed and set aside. Similarly, the order dated 19th June, 2001 passed by the Labour Court in Recovery Application No.1 / 2001 challenged in the SCA No.5300 / 2001 is also hereby quashed and set aside.

However, considering all these factual aspects of the matter and submissions of the learned advocates for the parties, the respondent is entitled to full wages for

the period during which he remained unemployed from 27th October, 1993 to 30th May, 1994 i.e. till the date of reinstatement by the appellate authority. Therefore, it is directed tot he petitioner Corporation to pay full wages to the respondent workman for the period from 27th October, 1993 to 30th May, 1994, if so far not paid by the petitioner Corporation, within period of one month from the date of receipt of this order.

Considering the second request of Mr.Mishra, learned advocate for respondent workman in respect of delay caused in raising the dispute against second termination dated 5th December, 1995, it is observed that it is open to the respondent workman to challenge the second termination order dated 5th December 1995 by way of raising industrial dispute under the provisions of Industrial Disputes Act, 1947 before the appropriate machinery under the law. As and when such industrial dispute is raised by the respondent workman before the concerned authority, the concerned authority may consider the case of the respondent workman in respect of delay aspect and the fact that the respondent workman was initially terminated on 27th October, 1993, against which, Reference No.104 / 94 preferred which came to be decided on 31st May, 1999. Special Civil Application No.7197 / 1999 has been preferred in May, 2000 and the mater is pending till today. Thus, the proceedings remained pending since 1994 to 2002 before the Labour Court and this Court. Therefore, the appropriate concerned authority may consider all these aspects and to pass appropriate orders upon such application that will be filed by the respondent workman under Section 10[1] of the Industrial Disputes Act, 1947 and accordingly refer the matter before Labour Court for adjudication.

In both these petitions, Rule is made absolute to the extent indicated above. No order as to costs.

Date : 14-3-2002 [H.K.Rathod, J.]

#kailash#